IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4538 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of 1 : NO

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5. Whether it is to be circulated to the Civil Judge? : NO

SUBHASH P CHAVDA AHIR KELAVANIMANDAL

Versus

STATE OF GUJARAT

Appearance:

NANAVATI ASSOCIATES for Petitioners

MR M.A.BUKHARI INSTRUCTED BY PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 26/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, order or direction quashing and setting aside the Government Resolution, dated October 14, 1998 issued by the Education Department of the Government of Gujarat, (Annexure `C') by which exemption from operation of Centralised Admission Scheme which was granted to the petitioner institute was unilaterally cancelled and consequential action vide letter dated 24th January, 2000 (Annexure `S') wherein it was observed that though as per the interim order passed by this Court, provisional admissions were given and examinations of students were conducted, results of such examinees will not be declared.

The case of the petitioner was that it intended to start a college for the purpose of conducting C.P.Ed. and D.P.Ed. courses. For that purpose, an application was made which was granted and a resolution was passed by the Joint Director of Education , respondent No.3, on 2nd September, 1992 and permission was granted to the petitioner to start the said courses for 45 students commencing from academic year 1992-93. In resolution, dated 2nd September, 1992 (Annexure `A'), one of the terms in the permission read as under:

> "(6) The trainees shall be admitted by the trust to the college according to the Centralised Admission Scheme of the Government and the rules framed in that behalf."

It was the case of the petitioner that in Resolution dated 16th September, 1992, said condition was not there. Instead, general condition No.8 was incorporated which read as under :

> "(8) The trust shall strictly comply with the aforesaid conditions and the prevailing rules and regulations of the Government. If there is any breach committed by the trust of the rules and regulations or the conditions, then its approval shall immediately be cancelled and the trust will not make any grievance therein and an assurance in writing to that effect shall be given by the trust to the Chief Education Commissioner."

It was also the case of the petitioner that since no grant was to be given and it was unaided institute, provision relating to Centralised Admission Scheme would

not apply to the petitioner and accordingly, admissions were given by the petitioner itself. Certain orders were passed by the authorities by which the petitioner was granted permission to give admission without being inhibited by the Centralised Admission Scheme. Initially, such permission was granted year after year, but finally, vide resolution, dated September 30, 1997 , such permission was granted on permanent basis. Said resolution reads as under :

"The Government granted permission to C.P.Ed/ D.P.Ed college run by Dr. Subhash P. Chavda , Ahir Education Trust,Junagadh , according to the resolutions at Sr. No. (1) and (2) under reference dated 2.9.1992 and 16.9.1992. According to the provisions of the said resolutions the said permission was granted on the condition that for running these courses, the trust shall not be given any grant. On t hat basis, the trust was obtaining permission of the Government every year and was giving admissions in its own way by remaining outside the Centralised Admission Scheme.

After careful consideration, as the said trust was not given any grant by the Government, permission is hereby granted by the Government on permanent basis/ for a fixed number (of admission) allocated to the trust to give admission to the C.P.Ed. D./P.Ed. in its own way by remaining outside the Centralised Admission Scheme.

By order and in the name of the Governor of Gujarat."

It was the case of the petitioner that it was surprised and shocked when a resolution was issued by the Government on October 14, 1998 by which permission which was granted was unilaterally cancelled. Para 2 of the said resolution reads as under :

"2. The Government has reconsidered the permission granted vide resolution of this Department dated 30./9.1997 and the said permission is hereby cancelled and the admissions for ensuing academic year shall not be given by it and they shall be given under the Centralised Admission Scheme of the Government."

Being aggrieved by the said order, the petitioner approached this Court by filing this petition. On July 5, 1999, the matter was placed for admission and this Court (M.R.Calla, J.) admitted the petition and passed the following order:

"Mr. K.S. Nanavati for the petitioners.

The invitation as prayed for is granted. The same may be carried out.

Rule. Notice as to interim relief returnable on 12th July, 1999. Direct service is permitted."

On 16th July, 1999, further order was also passed by this Court which reads as under :

"Mr. S. N. Thakker for M/s Nanavati Associates for the petitioners. No one appears on behalf of respondents despite service of Rule and the Notice as to interim relief. Mr. B.Y. Mankad, learned AGP who is present in the court pleads no instruction. Learned counsel for the petitioners has pressed for interim relief. In the facts and circumstances of this case, it is left open for the petitioner to initiate the process of admission for C.P.Ed. and D.P. Ed courses for the purpose of provisional admission only. Let the matter be listed again before this court on 4th August, 1999 so as to consider the question of passing the final orders on interim relief. Respondents may file reply in teh meantime if they so desire and it will be also open for them to apply for vacation/ modification of this order. Put up on 6th August 1999. Direct service is permitted."

Affidavit in reply is filed by the Joint Director. The matter was placed before this Court for further orders. On April 19, 2000, Mr. Nanavati for the petitioner prayed for interim relief in view of the fact that results were not declared. I, however, thought it proper not to grant interim relief which would lead to eventually allowing the petition, and instead, I directed

the office to place the matter for final hearing on April 25, 2000. Accordingly, the matter has been placed for final hearing.

I have heard Mr.Nanavati for the petitioner and Mr. M.A. Bukhari, AGP instructed by M/s Patel Associates for the respondents.

Mr. Nanavati raised several contentions. He submitted that permission for exemption from operation of Centralised Admission Scheme was granted by Government by passing resolution and such permission can never be revoked or cancelled. He submitted that even if it is assumed for the sake of argument that permanent exemption also can be withdrawn or revoked, such action could not have been taken without issuing notice, calling for explanation and affording reasonable opportunity of hearing. Since the action is in violation of principles of natural justice, it deserves to be quashed and set aside. Counsel submitted that , when no grant was to be given and permission was granted on condition that it would remain unaided institute, no condition could be imposed by directing the petitioner to give admission on the basis of Centralised Admission Scheme and such condition would be arbitrary and unreasonable. Finally, it was stated that in similar circumstances, another institute viz. Gayatri Kelavani Mandal, Mehmedabad, District Kheda was granted has not been insisted to give admission through Centralised Admission Scheme and though the case of the petitioner is similar to that of Gayatri Kelavani Mandal, it has not been extended similar benefit. Counsel, in this connection, drew my attention to the letter written by the Honourable Education Minister to the effect that similar treatment ought to have been shown to the petitioner.But it was not done. Hence, the action of the respondents is arbitrary, discriminatory and violative of Articles 14 and 19 of the Constitution.

Mr. Bukhari, learned AGP instructed by M/s Patel Advocates ,on behalf of the respondents, on the other hand,supported the action taken by the authorities. Relying on the affidavit in reply filed by the Director, National Service Scheme, he submitted that permission was granted to start the institute on fulfilment of all terms and conditions which may be fixed by the Government from time to time and one of the conditions imposed on the institute was to give admission through Centralised Admission Scheme . Government has decided to adhere to the said policy and a resolution to that effect was passed on October 14, 1998. It was then stated that

"other institutions in the State follow such resolution for admission by centralised scheme". He also submitted that the petitioner gave guarantee/ affidavit vide letter dated 19th September, 1992 that it would comply with all terms and conditions. Institute also has to maintain ratio of admission of 70:30 of boys and girls respectively. In the light of the policy decision and terms and conditions on which the petitioner was granted permission will have to be observed by the petitioner. Inspite of that and disobeying the resolution, dated October 14, 1998 and giving admission through Centralised Admission Scheme, an advertisement dated 23rd March, 1999 was issued by the petitioner . The petitioner has no right to issue such advertisement or to give admission ignoring Centralised Admission Scheme.. It was,therefore, submitted that the impugned action taken by the Government cannot be said to be contrary to law.

Though several arguments were advanced as stated above, in my opinion, it would be appropriate, if without entering into larger issues, petition can be disposed of only one one ground. As is clear from the recor d, vide resolution at Annexure `B', dated September 16,. 1992, no condition was imposed on the petitioner to give admission through Centralised Admission Scheme. It is no doubt stated that admission would have to be given in accordance with the rules and regulations framed from time to time. But it was the case of the petitioner and there are orders on record in which it was specifically mentioned that the petitioner was permitted to grant admission without resorting to Centralised Admission Scheme. In communication, dated 23rd September, 1992, at Annexure `D', it was stated by the Commissioner of Higher Education, that generally, under the prevalent rules and regulations of the State Government, admission would have to be given as per the Centralised Admission Scheme , but as the petitioner was not paid grant , the institute was granted exemption from admitting students as per Centralised Admission Scheme, as a special case. Such orders were passed by the respondents form time to time, for example, Annexure `F', dated 19th June, 1993 grants such exemption for academic year 1993-94; letter,dated 10th June, 1995, Annexure `I', grants exemption for the academic year 1995-96. But finally, vide resolution, dated 30th September, 1997, Annexure `K', it was specifically observed that permission was granted to the petitioner to start courses of C.P.Ed and D.P.Ed. and since the petitioner was not paid any grant, it was given permission by the State Government every year and the petitioner was giving admission "in its own way by remaining outside the Centralised Admission Scheme". It

was further stated that after careful consideration, the trust was granted permission "on permanent basis" for a fixed number of admission in its own way by remaining outside the Centralised Admission Scheme. Thus, it is clear that initially, for some time, the petitioner was granted permission to give admission to students by not adhering to the Centralised Admission Scheme in its own way for specified years. Ultimately, in 1997, a resolution was passed granted exemption from operation of Centralised Admission Scheme to the petitioner permanently.

I find considerable force in the argument of Mr.Nanavati that when such permission was granted on permanent basis, it could not have been cancelled, revoked or withdrawn without issuing notice,affording an opportunity of hearing and observing principles of natural justice. The order dated October 14, 1998 undoubtedly adversely affects the petitioner and such action could not have been taken by the respondents without observing principles of natural justice and fair play. Only on that ground , in my opinion, the petition deserves to be allowed and is accordingly allowed. I may observer that other contentions were also raised by the learned counsel for the petitioner including the contention that even after the order passed by the authorities on October 14, 1998 and statement made in the affidavit in reply by the Joint Director that after 14th October, 1998, the said policy is followed and all other institutions in the State are directed to give admission through Centralised Admission Scheme, in fact, it is not so. For that, reliance was placed on an order passed by the Government on 9th July, 1999 in favour of Gayatri Kelavani Mandal and also a letter written by the Honourable Education Minister on 1st October 1, 1999. In my opinion, however, it is open to the petitioner to rely on such orders as well as letter as and when the authorities afford hearing to the petitioner , as the present petition deserves to be quashed and set aside for violation of principles of natural justice and fair play. It is also open to the petitioner to raise all other contentions available to it in law.

For the foregoing reasons, in my opinion, the petition deserves to be allowed and is accordingly allowed. Order at Annexure `L',dated 14th October, 1998, letter dated 1st June, 1999 at Annexure `Q' and consequential communication dated 24th June, 2000 issued by the Secretary, State Examination Board, Ahmedabad are hereby quashed and set aside. It is needless to state that as the impugned order dated 14th October, 1998 is quashed

and set aside, all consequential actions must fall on the ground and that the authorities will take appropriate action including action of declaration of results of students who had studied in the petitioner institute and appeared in the examination. Rule is made absolute. No order as to costs. D. S.

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parekh